IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

MFA.No. 881 of 2001(B)

OPMV.494/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR
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APPELLANT: PETITIONER

MADATHILAKATH PATHUMOL,
AGED 47 YEARS, D/O.KOYAKUTTY,
PALLAR, P.O., VAIRANCODE,
VIA THIRUNAVAYA.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS: RESPONDENTS
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1. **MAIMOONA, W/O. HAMZA, MULLAN MAKKA HOUSE, P.O., PONMUNDAM, TIRUR.**

2. **A.ABDUL KADER, S/O. BEERAN, EDAKKUNDATHIL HOUSE, AREEKAD, THALAKKADATHUR TIRUR.**

3. **UNITED INDIA INSURANCE CO. LTD., TIRUR.**

4. **T.DAVOOD, THARAMMAL HOUSE, P.O. NIRAMARUTHUR, TIRUR.**

5. **NATIONAL INSURANCE CO. LTD., MAVOOR ROAD, CALICUT.**

BY ADV. SRI.R.S.KALKURA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.T.SANKARAN, JJ.

M.F.A.NO.881 OF 2001 (B)

Dated this the 3rd day of December, 2007

J U D G M E N T

KOSHY,J.

Son of the appellant sustained fatal injuries in a motor accident on 8.1.1998. An amount of Rs.3,50,000/- was claimed as compensation. The tribunal found that accident occurred due to the negligence of the driver of the vehicle insured by the 3rd respondent Insurance company. However, total amount awarded was only Rs.98,800/-. Only quantum of compensation is disputed in this appeal and we are only considering the same.

2. It was contended that the deceased was an autorikshaw driver and his monthly income was Rs.3,500/- per month. Petitioner also produced driving licence and badge to show that he is entitled to drive the autorickshaw. It was further contended that he got a job in Dubai and his visa was

ready. Because of the accident, he was unable to go abroad. His father was also in Gulf. Ext.A4 is the passport. Principles in ***General Manger, K.S.R.T.C. v. Susamma Thomas ((1994) 2 SCC 176)*** has to be taken into account in taking the future prospects for calculating notional monthly income. However, we are of the opinion that his prospects of employment cannot be taken as a ground for calculating compensation but on the basis of the salary he may earn in Gulf. But at the same time, he was an autodriver. Even considering the average income of an autodriver in the State in 1998, he may get more than Rs.100 per day, and if that is taken into account, his monthly income will be Rs.2,500/- per month, that is, minimum amount that an autodriver can earn in the State at the time of accident. Therefore, that can be taken for calculating compensation. It is argued that he was only 25 at the time of accident. Therefore maximum multiplier ought have been taken by the tribunal. But considering the age of the mother, only 13 is taken as the multiplier. We are not changing the same and deceased was unmarried and in such cases, age of the parents also shall be taken into account while

assessing multiplier. It is contended that apart from the mother, there were younger sisters and brothers. But claimant was only the mother. After deducting about $^{1}/_{3}^{rd}$ for personal expenses, family dependency will be Rs.1,650/-. Hence compensation payable will be Rs.1,650 x 12 x 13 = Rs.2,57,400/-. Loss of dependency awarded by the tribunal was only Rs.78,000/-. Hence claimant is entitled to additional compensation of Rs.1,79,400/-. With regard to other heads, sufficient compensation was granted. The above amount should be deposited by the 3rd respondent Insurance company with 7.5% interest from the date of application till its deposit over and above the decreed amount by the tribunal. Since the accident happened in 1998, on deposit of the amount, appellant is allowed to withdraw the same. With the above observations this appeal is allowed.

J.B.KOSHY, JUDGE

K.T.SANKARAN, JUDGE

prp

J.B.KOSHY & K.T.SANKARAN, JJ.

M.F.A.NO.881 OF 2001 (B)

J U D G M E N T

3rd December, 2007